

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B04

PLR-126940-08

Date:

October 22, 2008

### Legend:

Taxpayer 1                =  
Taxpayer 2                =  
Trust                        =

Year 1                      =  
Year 2                      =

Dear                        :

This is in response to a letter dated May 16, 2008, and subsequent correspondence, from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate generation-skipping transfer (GST) exemptions to a trust.

The facts submitted and the representations made are as follows. In Year 1, Taxpayers 1 and 2 created an irrevocable trust, Trust, for the benefit of their child and grandchildren. Trust has GST potential. In Years 1 and 2, Taxpayer 1 transferred cash to Trust. Taxpayers 1 and 2 retained an accountant to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Years 1 and 2. On these Forms 709, Taxpayers 1 and 2 elected to treat gifts made by either of them in Years 1 and 2 as made by both of them pursuant to § 2513. The accountant, however, in preparing the Forms 709 failed to allocate the GST exemptions of Taxpayers 1 and 2 to the transfers.

Taxpayers 1 and 2 are requesting an extension of time pursuant to §§ 2642(g) and 301.9100-3 to allocate the GST exemptions of Taxpayers 1 and 2 to the transfers made to Trust in Years 1 and 2, effective as of the dates of transfer and based on the value of the transfers on the dates of transfer.

### Law and Analysis:

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2631(a) (in effect at the time of the transfer) provides that for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time of sixty (60) days from the date of this letter is granted to allocate the GST exemptions of Taxpayers 1 and 2 to the transfers made to Trust in Years 1 and 2. The allocations will be effective as of the dates of transfer and will be based on the fair market value for federal gift tax purposes of the transfers on the dates of transfer. The allocations should be made on supplemental Forms 709 for Years 1 and 2 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Curt G. Wilson

Curt G. Wilson  
Deputy Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes